

Remarks:

Reconsideration of the application is requested.

Claims 1-7 and 10-16 are now in the application. Claims 1 and 2 have been amended. Claims 8-9 have been cancelled. Claims 10-18 have been added.

Support for the newly entered claim 11 can be found in claims 1 and 9 as originally filed. Newly entered dependent claims 12-18 are identical to dependent claims 2-7 and 10 except for being dependent on claim 11.

In item 1 on page 2 of the above-identified Office action, the drawings have been objected to as not showing every feature of the invention specified in the claims under 37 CFR 1.83(a). The Examiner's comments have been noted and new drawings are enclosed, showing the features deemed missing by the Examiner.

In item 3 on page 3 of the Office action, claims 1, 2, and 8 have been rejected as being indefinite under 35 U.S.C. § 112, second paragraph.

More specifically, the Examiner has stated that "[a]s to claim 1, it is unclear how the plurality of layers relates to the structures being claimed." The language "a plurality of

layers" in the preamble of claim 1 has been replaced with the appropriate language used in the body of claim 1.

The Examiner stated that "[a]s to claim 2, it is unclear what a periodic basic grid and how it relates the structure that is being claimed." The Examiner's comments have been noted and the appropriate corrections have been made to claim 2.

Support for the changes to claim 2 can be found in lines 6-9 on page 3 of the instant application.

In regard to claim 8 the Examiner stated that "[i]t is unclear how the 'one further metalization layer' is formed adjacent one of the first or second layer." In order to expedite prosecution, claim 8 has been cancelled and, therefore, this rejection is now moot.

In regard to claim 9 the Examiner stated that "[i]t is unclear how the embedded DRAM relates to the structure that is being claimed." Claim 9 has been cancelled and the subject-matter of claim 9 is contained in the newly entered independent claim 10.

It is accordingly believed that the claims meet the requirements of 35 U.S.C. § 112, second paragraph. Should the Examiner find any further objectionable items, Counsel would appreciate a telephone call during which the matter may be

resolved. The above-noted changes to the claims are provided solely for the purpose of satisfying formal requirements or are made solely for cosmetic reasons to clarify the claims. The changes are neither provided for overcoming the prior art nor do they narrow the scope of the claims for any reason related to the statutory requirements for a patent.

In item 5 on page 3 of the Office action, claims 1-6 and 8 have been rejected as being obvious over *Diewald et al.* (US 6,277,761) in view of *Son* (US 6,072,242) under 35 U.S.C. § 103.

In the third paragraph on page 5 of the Office action, claims 7 and 9 have been rejected as being obvious over *Diewald et al.* in view of *Son* and further in view of *Huang* (US 6,353,269) under 35 U.S.C. § 103.

35 U.S.C. § 103(c), as amended on Nov. 29, 1999, states:

35 U.S.C. 103 Conditions for patentability; non-obvious subject matter.

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall **not** preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

(emphasis added)

The instant application was filed on February 25, 2002, and therefore, after November 29, 1999, and therefore, is subject to amended 35 U.S.C. § 103.

Both the instant application and *Diewald et al.* were, at the time the invention was made, owned or assigned to SIEMENS. Once the claim for priority has been perfected, *Diewald et al.* qualify as prior art only under § 102(e) and, therefore, *Diewald et al.* is not available as a prior art reference for non-obviousness against the instant application under 35 U.S.C. § 103(c).

A claim for priority based on German application 199 39 852, filed August 23, 1999, is made in the instant application. A certified copy of the German patent application and a certified English translation will be filed as soon as they are received by Counsel which will perfect the claim for priority.

To corroborate the copendency of the instant application and the designation of the United States in the International Application, a copy of the cover page of the International Application and the International Preliminary Examination Report (PCT/IPEA/409) are enclosed.

Considering that the primary reference *Diwald et al.* is not available as prior art against the instant application, it is believed not to be necessary at this stage to address the secondary references *Son* and *Huang*, and whether or not there is sufficient suggestion or motivation with a reasonable expectation of success for modifying or combining the references as required by MPEP § 2143.

In view of the foregoing, reconsideration and allowance of claims 1-7 and 10-18 are solicited.

Petition for extension is herewith made. The extension fee for response within a period of one month pursuant to Section 1.136(a) in the amount of \$ 110.00 in accordance with Section 1.17 is enclosed herewith.

Please charge any other fees which might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner and Greenberg, P.A., No. 12-1099.

Respectfully submitted,



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